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9                   **UNITED STATES DISTRICT COURT**  
10                   **SOUTHERN DISTRICT OF CALIFORNIA**

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12                   UNITED STATES OF AMERICA,  
13    Plaintiff,  
14    v.  
15                           CHASAMONE PHRAKOUSONH,  
16    Defendant.

CASE No.09-cr-2709-BTM-1

**ORDER RE: MOTION TO  
REDUCE SENTENCE**

17                   Defendant Chasamone Phrakousonh has filed a *pro se* Motion to  
18 Reduce Sentence (Doc. 294) pursuant to the Fair Sentencing Act of 2010,  
19 18 U.S.C. § 3582(c)(2). Defendant's argument is based on a retroactive  
20 amendment to the United States Sentencing Guidelines ("U.S.S.G.") that  
21 lowered the base offense levels applicable to cocaine base ("crack")  
22 offenses under U.S.S.G. § 2D1.1.

23                   A defendant is eligible for a sentence reduction if two prongs are  
24 satisfied: (1) the sentence is "based on a sentencing range that has  
25 subsequently been lowered by the Sentencing Commission" and (2) "such a  
reduction is consistent with applicable policy statements issued by the  
26 Sentencing Commission." United States v. Wesson, 583 F.3d 728, 730 (9th  
27 Cir. 2009) (quoting 18 U.S.C. § 3582(c)(2)). See also U.S.S.G. § 1B1.10  
28

1 (Reduction in Term of Imprisonment as a Result of Amended Guideline  
2 Range). The fact that the sentence resulted from a binding plea agreement  
3 is not dispositive as to the applicability of 18 U.S.C. § 3582(c)(2). See  
4 Freeman v. United States, 131 S. Ct. 2685 (2011). Defendant's motion  
5 appears to be based on U.S.S.G. Amendment 750, which reduces the base  
6 offense level for crack cocaine offenses in U.S.S.G. § 2D1.1(c) by applying  
7 an 18:1 crack-to-powder ration (rather than a 100:1 ratio), effective  
8 November 1, 2011. See U.S.S.G. Amend. 750, Supp. to App. C,  
9 Amendments to the Guidelines Manual.

10 It is undisputed that Defendant pled guilty to Count One of the  
11 Indictment, i.e., conspiracy "to distribute 50 grams and more of  
12 methamphetamine (actual), a Schedule II Controlled Substance," in violation  
13 of 21 U.S.C. §§ 841(a)(1), 846. On November 1, 2010, Defendant was  
14 sentenced to 135 months incarceration plus five years of supervised  
15 release. That sentence was based on an offense level determined by the  
16 application of the guidelines for methamphetamine, not crack cocaine.  
17 U.S.S.G. amendment concerning crack offenses is hence inapplicable to  
18 Defendant. See Bibbs v. United States, 2012 U.S. Dist. LEXIS 24295 (S.D.  
19 Cal. Feb. 27, 2012); United States v. Armenta-Lopez, 2008 U.S. Dist. LEXIS  
20 81714 (C.D. Cal. Apr. 7, 2008).

21 Defendant disputes this point, relying principally upon the Sentencing  
22 Opinion in United States v. Hayes, 948 F. Supp. 2d 1009 (N.D. Iowa 2013)  
23 (Bennett, J.). In Hayes, the district judge voiced a policy disagreement with  
24 the methamphetamine guidelines and applied a variance, finding that a  
25 sentence within the guidelines range would be excessive. Defendant cites  
26 several other cases applying variances, (Reply at 6-7), but none are  
27 resentencing orders based on a Guideline amendment concerning a  
28 methamphetamine conviction. Defendant therefore fails to satisfy the first,

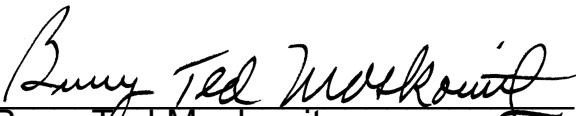
1 "based on" prong of the analysis, and is ineligible for a reduction of  
2 sentence pursuant to 18 U.S.C. § 3582(c)(2) at this time.

3       However, a proposed amendment to the Guidelines may very well  
4 lower Defendant's base offense level by two levels. See Proposed  
5 Amendment 782, U.S.S.G. App'x C, 2014 ed. (reducing by two levels the  
6 offense levels assigned to the quantities described in section 2D1.1 and  
7 making corresponding changes to section 2D1.11). This amendment may  
8 take effect on November 1, 2014. Therefore, the Court continues this  
9 motion until January 16, 2015 at 3:00 p.m., at which time it will consider the  
10 effect of the amendment.

11       The parties shall submit briefs on the effect of the amendment on or  
12 before December 19, 2014.

13       **IT IS SO ORDERED.**

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20 DATED: October 1, 2014  
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Barry Ted Moskowitz  
Chief United States District Judge